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Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?

REBA SOM

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If to Gandhi goes the credit of having drawn out Indian women from their cloistered protected environment to join the national movement for freedom, to Jawaharlal Nehru surely goes the credit for having recognized the need formally to grant equality between the sexes and to enshrine it in the Fundamental Rights drawn up at the Karachi Congress of 1931.

Analyses on Gandhi's role in the women's movement have veered from one extreme position, that he used the essential non-violent nature of women for the limited purpose of making the political strategy of non-violent, non-cooperation viable, to the other extreme that he revolutionized the Indian social scene by drawing women out of their protective shell. The truth, as always, lies in between. It is a fact that, as never before, Gandhi's call to women to participate in the movement had a dramatic impact. The physical presence of women engaged in picketing, boycott and other non-cooperative activities added a new dimension to the movement. But it is equally true to say that Gandhi had thought of women's participation in a limited sense. He was aware that the innate qualities of silent suffering, stoic

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This is an expanded version of paper presented at the Conference on India–Canada Relations held in Shimla (May 16–19, 1991) under the auspices of the Shastri Indo-Canadian Institute.

Abbreviations used:
CAD – Constituent Assembly Debates
LAD – Legislative Assembly Debates
LSD – Lok Sabha Debates (Parliamentary Debates)
SWJN – Select Works of Jawaharlal Nehru, edited by S. Gopal (New Delhi, 1972 onwards)
NMML – Nehru Memorial Museum Library, New Delhi

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resistance and non-violence in a woman would give credence to the underlying non-violent philosophy of his movement. But he was very wary of allowing women to take on roles other than what he prescribed. And so he was reluctant to allow women activists to participate in the salt protest marches lest they become victims of violence. In general, Gandhi sought to hold the women's discontent within the overall nationalist cause and direct it in such a way that it remained targeted at imperialism. Thus women's participation in the national struggle remained within the parameters of what Geraldine Forbes calls 'the politics of respectability'.[1]

In his construct of women Gandhi defined his concept of femininity within a prescriptive frame of reference. Intrinsically a believer in sex equality Gandhi declared: 'I am uncompromising in the matter of women's rights. In my opinion, she should labour under no legal disability not suffered by man'.[2] But, at the same time, he envisioned separate roles for men and women in society. As he put it, 'man and woman are equal in status but are not identical. They are a peerless pair being supplementary to one other; each helps the other'. Accepting the role differentiation between man and woman, Gandhi declared that their vocations must be different for 'equality of sexes does not mean equality of occupation'.[3] While drawing women into the vortex of the national movement, Gandhi did not spell out any definite programme for women to achieve socio-economic equality, nor did he take up socially divisive issues along caste, religious and sex lines. Instead, he devised programmes such as spinning which would bind the various women's social groups together and give them a common agenda and also dwelt on self-effacement and silent suffering, the qualities of Sita which would give women the ideological boost and moral encouragement for sacrifice.

To Jawaharlal Nehru, women's participation in large numbers in the national struggle in response to Gandhi's call was a social revolution of sorts. It broke barriers of social restraint and gave women a new cause and sense of commitment. As he wrote in his *Discovery of India*, '. . . a remarkable thing happened. Our women came to the front and took charge of the struggle, . . . Here were these women, women of the upper or middle classes, leading sheltered lives in their

[1] Geraldine Forbes, 'The Politics of Respectability: Indian Women and the Indian National Congress', in D. A. Low (ed.), *The Indian National Congress, Centenary Hindsights* (OUP, Delhi, 1988).
[2] M. K. Gandhi, *The Role of Woman*, edited by Hingorani (1964).
[3] *Ibid.*

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homes—peasant women, working class women, rich women—pouring out in their tens of thousands in defiance of government order and police lathi'.[4]

In his own family, Nehru realized the impact of Gandhi's call. Kamala Nehru was a total convert to the Gandhian philosophy of non-violent, non-cooperation and threw herself into the fray with a zeal that took even Jawaharlal by surprise. In fact it was her total commitment that made it simpler for Jawaharlal to take the plunge into a full-time involvement in national politics. Explaining Kamala's involvement, Nehru simply explained: 'She wanted to play her own part in the national struggle and not be merely a hanger-on and a shadow of her husband. She wanted to justify herself to her own self as well as to the world.'[5]

To Jawaharlal the participation of women in the national movement was only the beginning of a larger process whereby women would struggle to find their proper identity in the Indian social milieu and enjoy equal rights with men. Nehru was perhaps one of the few leaders who sensed this inevitable turn in the women's movement and actually heralded it. He loudly proclaimed: 'I have the greatest admiration . . . for the women of India today. I have faith in them. I am not afraid to allow them freedom to grow, because I am convinced that no amount of legal constraint can prevent society from going in a certain direction. And if you put too much legal constraint, the structure breaks'.[6] It was this legal constraint, binding women in society, that Jawaharlal sought to remove but he realized that the process of doing so must be actively pursued by women. As he put it, 'no people, no group, no community, no country has ever got rid of its disabilities by the generosity of the oppressor . . . the women of India will not attain their full rights by the mere generosity of the men of India. They will have to fight for them and force their will on the menfolk before they can succeed.'[7] While on the one hand Nehru was forthright in condemning the male dominated society that India was where 'our civilization, our customs, our laws, have all been made by men and he has taken good care to keep himself in a superior position and to treat woman as a chattel and a plaything to be exploited for his own advantage and amusement',[8] on the other hand he was equally aware

[4] J. Nehru, *Discovery of India* (1982), p. 41. [5] *Ibid.*

[6] Speech during debate on the Third Reading of the Hindu Marriage Bill, 5 May 1955. *LSD* 1955, vol. IV, pt II.

[7] *SWJN*, vol. 3, p. 363; Speech at Mahila Vidyapith, Allahabad, 31 March 1928.

[8] *SWJN*, vol. 6, p. 218. Address to Prayag Mahila Vidyapith, 24 Jan. 1934.

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that the move to break the socio-legal restraints on women had to be cautiously taken. He explained: 'inheritance, marriage, divorce are all supposed to be parts of the personal law of various communities and this personal law is supposed to be part of religion. It is obvious that no change can be imposed from the top'.[9] He visualized that education of public opinion would ultimately rally around support to get the measures of socio-legal equality between man and woman passed. This, however, was easier said than done and it took Nehru several years before he finally realized the volume of orthodox opinion arrayed against him in his bid to carry forward progressive legislation affecting personal laws.

Although the women's involvement in the freedom struggle was channelled by the Congress in an approved direction, there is no doubt that for many women, political involvement spurred their feminism and it was their commitment to improving the status of women that kept going their involvement in the freedom struggle. Already as early as 1917, the Women's Indian Association had petitioned Montagu, the Secretary of State for India, for women's political representation through adult franchise without any special reservation of seats. Although the ensuing 1919 Government of India Act excluded women from the vote, the Provincial Assemblies were allowed to drop the exclusion clause if they wished, which many of them did, led by the Madras Legislative Assembly. Even though a property qualification disqualified most women, who had normally no independent share in family property, the significance of this move was remarkable and lauded specially by Jawaharlal Nehru. As he put it, 'We must not forget that our womenfolk have consistently refused special and reserved representation in the legislatures. They have even protested against the partial representation that has been given to them. That attitude must be appreciated by the nation as a whole'.[10]

In fact, it was in this spirit of appreciation that Congress at the behest of Jawaharlal Nehru decided to enshrine the principle of equal rights for men and women in the Fundamental Rights of the People at the Karachi Congress of 1931. In spelling out the economic content of the equal rights for women, Nehru was doubtless inspired by Leninist rhetoric. Introducing the egalitarian legislation between the sexes, Lenin had said: 'We may now say with pride and without any exaggeration that outside of Soviet Russia there is not a country in the world where women have been given full equal rights . . .'. Acknow-

[9] *SWJN*, vol. 11, pp. 316–18.
[10] *SWJN*, vol. 7, p. 557.

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ledging that much of Lenin's legislation remained on paper, Nehru went on to observe that its importance lay in its 'powerful effect on changing the mentality of the masses.'[11] To Nehru symbolism was very important and in the Karachi resolution he saw the symbolic victory of women in their fight for recognition of equal status and civic rights, a significant victory for which women of England had to fight with great bitterness for generations.'[12]

What is of great significance to note in the passing of the Fundamental Rights resolution in 1931 is that it was adopted without any great opposition. In the first place it was considered to be a Gandhian concession to Jawaharlal Nehru.[13] Secondly, the political elite gave their support readily because thereby they could show that they were more socially advanced than the British and could counter claims that they were too backward for self-rule. Also, woman's suffrage was bound to help the nationalist cause, as any increase in India's political representation would be unfavourable to the British presence. But more importantly, no objection was raised because the rights were on paper and their realization remained in the unforseeable future. Expressing his ominous misgivings Jawaharlal Nehru said: 'Many of them who silently voted for the Karachi resolution might not have meant what the resolution laid down. They might have had mental reservations. The question was bound to arise again.'[14]

Nehru's fears were confirmed in a worse form than he had ever imagined when the movement to introduce reforms in Hindu personal law was initiated.

Hindu law had evolved over the years on the basis of (a) customs with diverse applications in the different parts of the country, and (b) the works of commentators expressed through different schools of legal thought such as Dayabhaga and Mitakshara which had varied applications in the different regions of the country. The British policy of non-interference in indigenous personal law and the rigidness of the British judiciary had created a situation where the evolutionary growth of Hindu law had become arrested. As Pattabhi Sitaramayya explained, 'when custom became petrified, progress became impeded altogether, and for a hundred and fifty years our society has not been

[11] *SWJN*, vol. 2, p. 441.
[12] *SWJN*, vol. 7, pp. 313–14.
[13] 'It was plain that Pandit Jawaharlal wanted it and that Mahatma Gandhi wanted to give Pandit Jawaharlal what he wanted'. *Amrita Bazar Patrika*, 3 April 1931.
[14] *SWJN*, vol. 7, p. 236.

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able to make much progress.'[15] Besides, the underlying principle of Hindu law in the pre-independence era was inequality, the inferior position of the woman in all matters governing personal law like marriage, maintenance, inheritance and guardianship. The fact that women were, to quote Nehru, 'shackled and unfree'[16] and the fact that the different High Court interpretations of legal texts created a sense of legal confusion, generated a need for bringing about a uniformity in legal practices through codification.

It was the passing of the Hindu women's Rights to Property Act, otherwise known as the Deshmukh Act, in 1937 that brought out the legitimacy of this demand for codification. The Act, while securing for the widowed daughter-in-law legal rights equal to those of her son, to enjoy her husband's share in the joint family property, did not give her absolute and alienable rights of ownership. Nor did it mention the rights of the daughter. It was clear that piecemeal legislation could not meet the growing demands for modernizing the whole structure of the law. There were difficulties in interpreting the Act[17] and protests made from many strata of society including the All India Women's Conference.[18] Finally, the government ordered an investigation of the situation as a whole and placed the Act of 1937 together with other similar bills pending, before a specially formed Committee for its detailed consideration.

The Committee, called the Hindu Code Committee, was set up in 1941 under the chairmanship of Sir B. N. Rau, a former judge of the Calcutta High Court. It distributed an elaborate questionnaire on various questions related to the Codification and after an examination of the replies received, submitted a report in 1941 urging the Government to go ahead with comprehensive legislation. It also suggested that instead of piecemeal legislation, a complete code should be prepared which should retain the distinctive character of Hindu Law while introducing particular changes. After a study of the draft bills prepared by the Rau Committee, the government revived the activities of the Hindu Code Committee in 1944 under Sir B. N. Rau which now met to prepare a Draft Code dealing specifically with Succession, Maintenance, Marriage and Divorce, Minority and Guardianship and Adoption. This Code known popularly as the Hindu Code Bill was widely circulated after being translated into 12 regional

[15] Pattabhi Sitaramayya, *CAD* 1948, vol. V.
[16] *SWJN*, vol. III, p., 191.
[17] J. D. M. Derrett, *Hindu Law Past & Present* (Calcutta, 1957), p. 57.
[18] Kamladevi Chattopadhyay, *Indian Women's Battle for Freedom* (1983).

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languages. The Code Committee toured the country extensively examining witnesses and finally presented a revised Code, which was introduced into the Legislative Assembly in 1947. It was the intention of the government that the Code should become law on 1 January 1948. However, the whole project was temporarily suspended when, with independence, the Constituent Assembly was formed and the energies of the legislature were devoted to consolidate the new regime. In 1948, under Nehru's Primeministership, the Draft Code was referred to a Select Committee under the Chairmanship of the Law Minister, Dr B. R. Ambedkar. While introducing the Code in the Constituent Assembly, Ambedkar pointed out that the main aim of the Bill was 'to codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and the Privy Council, which form a bewildering motley to the common man'.[19] He introduced several important changes in the Bill including equal property rights for women, abolition of customary law, and specification of grounds for divorce.

The reintroduction of the Bill in the Constituent Assembly with the major changes, created a most interesting situation. The founding fathers of the Constitution, who, a short while ago had passed the Constitution and accepted without discussion the principles of equality and absence of discrimination between the sexes, now in a total volte face opposed tooth and nail the Hindu Code Bill. Their opposition opened up the Pandora's box of age-old superstitions, complexes, patriarchal feelings and deep-rooted prejudices running along caste, class, religious and regional lines.

Matters came to such a pass that Nehru decided to break up the Code into four separate parts to facilitate their early passage. This was, however, not to be. Finally, in September 1951, B. R. Ambedkar resigned, a frustrated, ill and broken man. Nehru chose to bide time and ultimately in May 1955, the Hindu Marriage Act was passed, followed by the Hindu Succession Act in May 1956; the Hindu Adoption and Maintenance Act in December 1956 and the Dowry Prohibition Act in July 1961.

The voluminous debates on the Hindu Code brought into public focus a broad spectrum of ideas on social issues. An analysis of the dominant mentalities is crucial for an understanding of how Nehru had to dilute substantially his original position, resulting in a set of legislation which was more symbolic than substantial in character.

[19] 9 April 1948, *CAD* 1948, vol. V.

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The major groups opposing the legislation were:
(a) the conservative hardliners within the Congress Party; veterans like Vallabhbhai Patel, Rajendra Prasad, J. B. Kripalani who had a completely different world view from Nehru's and who had traditionally, through the 1920s and 1930s, been ranged against Nehru within the Congress, representing the conservative point of view. Rajendra Prasad entered into lengthy correspondence with Jawaharlal Nehru (copies of which he gave to Vallabhbhai Patel), trying to persuade him not to go through with the legislation and finally holding out the threat of refusing Presidential assent to the Bills, if passed. Patel, who was unmistakably opposed to the Bill[20] and shared Prasad's views, characteristically, did not have the inclination to argue the issue with Nehru. He simply disallowed time in the Parliament for discussion of the Hindu Code Bill and summarily dismissed it, saying: 'the Government do not propose to ask for any more days for the Hindu Code. It is unnecessary waste of time';[21]
(b) the Hindu fundamentalists within the Congress Party who were substantial in number, including the Deputy Speaker, Ananthasayanam Aiyyangar, who had openly declared that monogamy per se was not good and that in the case of dearth of children, there was no harm in allowing polygamy.[22] The fundamentalists constantly opposed and sabotaged the attempts of Ambedkar to proceed with the legislation. The fact that Ambedkar was outside the Congress Party made it more difficult for him to manoeuvre the simmering party politics from within.

The fact that the Congress Party was itself divided on the question of the Code gave a certain lever to Rajendra Prasad who repeatedly pointed out to Nehru his procedural lapse in not having formally notified the Congress Working Committee or the AICC about the Bill. Stoically Nehru tried to defend himself. While accepting the charge that the AICC or Working Committee had not considered the matter, he said that there was no precedent for such matters to be placed before the Congress. If indeed any Congress member was inclined to raising the matter for discussion, he could surely have done so, since the issue had received so much publicity;[23]
(c) the Hindu Mahasabha and its women's wing, with representatives

[20] Dhananjay Keer, *Dr Ambedkar, Life and Mission* (1962), p. 423.
[21] 5 April 1949, *CAD* 1949, vol. III.
[22] *LAD* 1946, p. 3407.
[23] Prasad to Nehru 24 July 1948; Nehru to Prasad, 27 July 1948 in *Sardar Patel's Correspondence: 1945–50*, vol. VI edited by Durga Das (1973) (hereafter, *SPC*, vol. VI).

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like Shyama Prasad Mukherjee, N. C. Chatterjee and others who opposed the Bills strongly for threatening the so-called religious foundations of Hindu society. By using inverse logic the Mahasabha leaders tried to suggest that the Hindu Code was, after all, a communal measure and a uniform Civil Code should have been made instead, to give effect to the secular ideals of the country. The real motives of the Mahasabha, however, were betrayed when Dr Shyama Prasad Mukherjee made the suggestion that the Hindu Code be made optional. Ambedkar was provoked into dismissing S. P. Mukherjee's remarks as not worth serious consideration since he had after all, as member of Nehru's Cabinet, whole-heartedly supported the Code which he was now opposing. Ambedkar also pointed out that the innocuous suggestion that a uniform Civil Code be initiated seemed curious, as he wondered how could opponents of the Bill turn overnight into protagonists of a Civil Code;

(d) the Sikh group represented by men like Sardar Mann and Sardar Hukum Singh who resented being clubbed with the Hindus in the broad framework of reform. They considered the Bill to be a dubious attempt on the part of Hindus to absorb the Sikh community;

(e) the Muslim group with men like Naziruddin Ahmad (Bengal) who were obviously encouraged by the fundamentalist group within the Congress to tilt the scale of opinion in their favour. Claiming to speak from experience, Ahmad criticized at length the bid to end Mitakshara joint family which, he said, would lead to breakdown of families and result in property wrangles. The Hindu families would then have the same fate as Muslim families and become pauperized.[24] Many members were not convinced of his sincerity and Renuka Ray openly asked Ahmad why he was chary of denying Hindus the advantages which Muslim society enjoyed;

(f) the women parliamentarians, who, while being greatly appreciative of the legislation, very often criticized the measures for not going far enough. As Sucheta Kripalani speaking on the Hindu Marriage Bill put it, 'this is basically a halting and half-hearted measure. It does give relief to certain suffering elements in our society, but by no means am I prepared to call it . . . a wonderfully progressive measure . . .'.[25] Hansa Mehta said that the Succession Bill did not go far enough as sons were regarded as being more equal than daughters.[26]

Although the focus of the Parliamentary debates tended to change

[24] *CAD* 1949, vol. III.
[25] *LSD* 1955, vol. IV, pt II. .
[26] *CAD* 1948, vol. V.

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periodically when the different bills and clauses came up for discussion, by and large the broad areas of opposition to the Bill, as expressed over more than a decade of debates and discussions, can be identified and the trends of thought highlighted.

A recurrent cry which appeared through the years of debate was that the Hindu shastras were hallowed by tradition and any attempt to tamper with them was presumptuous and undesirable. This was a view commonly shared by traditionalists, conservatives and many parliamentarians from the Akhil Bharatiya Hindu Mahasabha. N. C. Chatterjee, a Mahasabha member from Bengal, pointed out that the essence of Indian civilization which was 'the purity of family life, the great ideal of chastity and the great ideal of Indian womanhood' was being threatened to be sabotaged by the intended legislation. Describing Manu, Yagnavalkya and other law makers of India as 'God-given, God-intoxicated men, inspired by the highest ideals' he asked: what right did the Prime Minister have to initiate revolutionary bills which would shake the roots of Indian civilization shaped by personal law which has stood the test of centuries and thousands of years.[27] The Hindu Mahasabha had consistently in various meetings and resolutions[28] condemned the proposed Code for subverting Hindu ideas, culture and religion. It also feared that the ideology of Jawaharlal Nehru would be a menace to the religious identity of India and bring about 'a Godless State'.[29]

There was, moreover, a strong undercurrent of resentment at the fact that the Muslim Personal Law remained untouched. N. C. Chatterjee challenged: 'Why not frame, if you have got the courage and wisdom to do it, one uniform Civil Code? Why are you then proceeding with communal legislation?'[30]

There was another view strongly articulated by Dr Rajendra Prasad that the bulk of the proposed legislation, whch would affect 'the entire population by fundamental changes in the personal law of Hindus', was not sufficiently discussed, circulated and presented for public opinion.[31] Moreover, whatever evidence had been analysed by the Rau Committee had gone overwhelmingly against the Committee recommendations, as the note of dissent by Dr Dwarka Nath Mitter[32] and others had shown. Therefore, the matter should form part of the

[27] N. C. Chatterjee, 26 April 1955, *LSD* 1955 vol. IV, pt. II.
[28] Akhil Bharatiya Hindu Mahasabha Papers file C-57, NMML.
[29] *LSD* 1955, vol. IV, pt II.
[30] Naziruddin Ahmad *CAD* 1948, vol. V.
[31] Note of Rajendra Prasad, 31 July 1948, *SPC*, vol. VI.
[32] D. N. Mitter, ex-Judge Calcutta High Court, Member of Rau Committee, later became critic of Code.

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election manifesto instead of being hurriedly pushed through. Further, the Constituent Assembly which was elected for the special purpose of framing the Constitution of India was not competent to deal with legislation of such fundamental importance and controversial nature.[33] The views of Dr Prasad were widely shared. Concurring with the opinion of Dr Prasad, Pandit Thakur Das Bhargava (Congress U.P.) said that the sense of propriety and proportion demanded that the principles which had existed for thousands of years should not be hastily brushed aside by legislation.[34]

There was a strong feeling that the tradition of customary law had served well the purpose of effecting important socio-legal changes and, therefore, legislation would merely have a disruptive impact almost on all families.[35] As Rajendra Prasad put it, 'tremendous changes have come about without any legislation and are legalized under the sanction of custom which is ever-changing and ever-growing. I, therefore, do not see the necessity for hurried legislation . . .'.[36] Many parliamentarians like Lakshmi Kanta Moitra (Bengal) tried to ridicule the whole effort of codification as being an unwise, unnecessary exercise, 'a simple intellectual pastime; Codification for the sake of Codification.'[37]

There was also the feeling that the intended codification would lead to the furtherance of the progressive ideas of a small, if not a microscopic minority. Many of the reforms intended, e.g. divorce, existed in some form or the other in the customary laws and applied to 80% of the population. As Rajendra Prasad powerfully expressed it, by making it obligatory on all to have resort to a court of law caused unnecessary trouble, delay, expense and uncertainty to the majority of population who, in any case, had always exercised the same right through simple, inexpensive and unquestionable caste customs.[38] Rohini Kumar Chaudhuri (Assam-General) pointed out that a large mass of people dependent on agriculture and agricultural property would remain outside the pale of legislation which would cater to the interests of the so-called 'enlightened section'[39] or what Naziruddin Ahmed sarcastically called, 'the ultra modern' section of society.[40]

[33] Note of Rajendra Prasad 31 July 1948, *SPC*, vol. VI.
[34] *CAD* 1949, pt II.
[35] Notes of Rajendra Prasad, 31 July 1948 *SPC*, vol. VI.
[36] Note from Rajendra Prasad to J. Nehru, 15 Sept. 1951 *Indian Constitutional Documents*, vol. I, edited by K. M. Munshi (1967) (hereafter, *ICD*, vol. I).
[37] *CAD* 1949, pt II.
[38] Note from Rajendra Prasad to J. Nehru, 15 Sept. 1951, *ICD*, vol. I.
[39] *CAD* 1948, vol. V. [40] *Ibid.*

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Coming to the specific provisions of the Code there were long debates on the monogamy clause. Certain conservative elements pointed out that in any case the practice of polygamy had died down and if monogamy was enforced only on Hindus, they would be committing 'racial suicide'[41] as the Muslim population would multiply out of proportion to the existing Hindu ratio. Ananga Mohan Dam (Bengal-General) tried to clinch his argument by saying that compulsory monogamy would prove as disastrous as it had been for the Roman Empire where monogamy had led to concubinage on a large scale, leading to its fall.[42] Naziruddin Ahmed pleaded that 'polygamy is not as dangerous as it is supposed to be in point of view of abstract logic and abstract legislation.' Absolute prohibition of polygamy would be a 'defect and practical difficulty in the way of the Bill'.[43] He said there was comfort to be drawn from the fact that in effect having more than one wife was rare as 'one is costly and troublesome enough'.[44] Rajendra Prasad projected a new dimension to this debate by saying that while the number of polygamous marriages was in any case going down, it would be undemocratic to thrust the benefits of monogamy on a few 'against their will'. Ideally he recommended monogamy for a life time even in the event of death or divorce of spouse.[45]

On the clause for divorce, there were considerable misgivings among traditionalists who felt that thereby the institution of marriage would be dealt a severe blow. Laboured attempts were made to quote from legal luminaries like Dr Radha Binode Pal saying that divorce would result in a miserable life for women since they would have to face injustice and cruelty with divorce. Lakshmi Kanta Moitra declared that the introduction of divorce clause was the 'rudest possible shock' which was repugnant to Hindu notions of marriage which the shastras had rendered 'sacred and absolutely inviolable'.[46]

The recommendation for compulsory registration of marriages also caused deep resentment among many. P. B. Gole (Berar: Non-Mohammedan) argued that 'the very object of getting the marriage registered is to have a divorce'.[47]

Closely linked with the question of divorce was the provision for alimony. While welcoming the provision of alimony for women there

[41] Ananga Mohan Dam *LAD* 1944, vol. III.
[42] *Ibid.*
[43] Naziruddin Ahmad, *CAD* 1949, vol. III.
[44] *Ibid.*
[45] Note from Rajendra Prasad to J. Nehru, 15 Sept. 1951, *ICD*, vol. I.
[46] *CAD* 1949, vol. II.
[47] Gole; *LAD* 1947, vol. I.

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was a sense of outrage among certain women members at the clause that alimony may be stopped if the woman has not remained chaste. Sucheta Kripalani feared that vague charges might be brought in the name of chastity to deprive women of property rights. As Renu Chakravarty put it, the chastity clause could well be the 'handle to beat the wife with'.[48] The question of alimony to be paid by women threw up interesting points of view. Although the principle was opposed by most men and women in the House, the reasons put forward betrayed deep-seated prejudices. Sucheta Kripalani pointed out that the provision that husbands can claim alimony was itself a shock to right thinking people as it had been purposely introduced with a vengeance on the plea of equality. Since women were economically not independent this provision had little meaning and demonstrated 'a monstrous kind of equality'.[49] Her husband Acharya Kripalani, interestingly enough, pointed out the flaw in women's argument, saying that when it was a question of alimony, women argued about not being economically independent, but how could they support themselves if divorced? He condescendingly advocated divorce rights only for women until true economic equality came to be established.[50]

To N. C. Chatterjee, the concept of men asking for alimony was unacceptable as it hurt his male pride. He called it 'unthinkable, revolting, preposterous . . . if any Hindu husband solemnly asks for alimony . . . he should be thrown out of the Hindu fold altogether'.[51] To that Pandit K. C. Sharma added, such a person would not be 'a manly man'.[52]

Perhaps the most vocal protests were articulated against the clause granting equal property rights to women for it threatened the well entrenched economic rights of the male in society. As Pandit Thakur Das Bhargava put it, it was 'equality run mad'.[53] It was pointed out that women traditionally were brought up with the purpose of being given in marriage into another family. As Lakshmi Kanta Moitra put it, 'the girl is made for her husband's family; she is not to become a part and parcel of the family where she is born. That is the whole thing. And, therefore, no question of injustice or inequality arises'.[54] While women should be given rights, he emphasized that there was no

[48] *LSD* 1955, vol. IV, pt II.
[49] Sucheta Kripalani, *LSD* 1955, vol. IV, pt II.
[50] Acharya Kripalani, *ibid.*
[51] N. C. Chatterjee, *ibid.*
[52] Pandit K. C. Sharma, *ibid.*
[53] *CAD* 1949, pt II.
[54] *Ibid.*

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question of giving her 'absolutely equal rights'.[55] It was feared that equal property rights for women would create family tensions within her paternal family. It would replace the relationship of affection between brother and sister by one of clashing economic interest.[56] Rajendra Prasad pointed out that the induction of daughters' husbands who were complete strangers into the family, to share property with the brothers, would result in 'a most heterogeneous conglomeration which would definitely lead to conflict and litigation'.[57] There was also the feeling that women, who had absolute rights over Stridhan (jewellery and valuables given at the time of marriage) and rights over their husbands' property, would now be given an unfair advantage with equal property rights in their fathers' property. As Ram Sahai (Gwalior State) pointed out, 'men are being subjected to the same injustice which has until now been done to the women'.[58]

There was a deep seated fear that by granting equal property rights to women, the Mitakshara concept of joint family would be dealt a crippling blow which in turn would break the basic fabric of Hindu society. There would be excessive fragmentation and litigation or, as Prasad explicitly put it, 'open violent conflict among members of family'.[59] As it is, the joint family system was gradually and surely breaking up and the legislation would add an unceremonious haste to the process.

Acharya Kripalani spoke forcefully about certain benefits that still came from the joint family system. It was 'an insurance against sickness, against unemployment, against old age and even against the "badmashi" of the young whether male or female'. It would be foolish to do away with the system without providing for some alternate social insurance for the people.[60]

As the different points of view on the various aspects of the codification began to emerge there was a tendency for prejudice to colour judgement. As Kripalani analysed, people came to be guided more by their passion than reason. Thus all those ranged on the side of the Bill were branded as ultra modern, westernized and not good Hindus, whereas those against the Bill were branded as being deeply religious, orthodox and reactionary.[61] Striking a note of caution on value judge-

[55] *Ibid.*
[56] N. Ahmad *CAD* 1949, pt III.
[57] Note from Rajendra Prasad to J. Nehru, 15 Sept. 1951, *ICD*, vol. I.
[58] *CAD* 1948, vol. V.
[59] Note from Rajendra Prasad to J. Nehru, 15 Sept. 1951, *ICD*, vol. I.
[60] Acharya Kripalani, *LSD* 1955, vol. IV, pt II.
[61] *Ibid.*

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ments Rajendra Prasad said: 'I do not think anything and everything which some people regard as reactionary or conservative is necessarily bad and everything that they call progressive is necessarily good. We have to weigh how it will be received by the vast bulk of Hindu public against what foreigners outside and those who call themselves "progressive" would say.'[62]

However, as opinions were forcefully articulated and prejudices mounted there was considerable politicization of the issues. Thus in the constituency of Hindu Mahasabha leader N. C. Chatterjee, Renu Chakravarty alleged that there was active propaganda that if the Hindu Code Bill was passed there would be complete incestuousness and wives would marry sons or sons marry daughters.[63] So deep ran prejudices that the Akhil Bharatiya Mahila Hindu Mahasabha actually sent a representation to Lord Wavell the Viceroy, asking him to disallow Renuka Ray, the well known western-educated woman activist from sitting in the Constituent Assembly representing the women's view, on the ground that she was of the Brahmo Samaj and hence ill conversant with the Hindu Law.[64] Mrs Jankibai Joshi, President of the All India Hindu Women's Conference shared with Rajendra Prasad her fears that a class of people detached from the current Hindu life and enamoured with western ideas had appointed the Rau Committee to prepare a Code with which they would silently disrupt the Hindu society.[65] There were attempts to show the decadence of western society and point out that the proposed legislation was along the same permissive lines and the sins of the western society would now invade and disrupt the age-old balance and stability of the Indian social fabric.

There were slanted comments made in the course of the debates on the role of westernized women, social butterflies, frequenting the Connaught Circus circuits,[66] in pushing the legislation through. While protesting against such insinuations, women leaders like Renu Chakravarty warned at the same time against the attitude of exaggerated feminism which would do more harm to the cause of women.

[62] Rajendra Prasad to J. Nehru, 24 July 1948, *SPC*, vol. VI.

[63] *LSD* 1955, vol. IV, pt II.

[64] Petition of Jankibai Joshi, President, A. I. Hindu Women's Conference to Lord Wavell, Governor-General of India, 20 March 1944, Akhil Bharatiya Hindu Mahasabha Papers File C-67, NMML.

[65] Jankibai Joshi to R. Prasad, 4 Feb. 1955 Akhil Bharatiya Hindu Mahasabha Papers, File C-183, NMML.

[66] N. C. Chatterjee, *LSD* 1955, vol. IV, pt II.

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She pointed out that it would be absolutely wrong to believe that 'marriage was an anti-man affair' and that the passage of the Bill would immediately confer equality on women, for, without economic equality and education, legislation would have no effect.[67]

Very often the debates took such a turn that the latent regional prejudices tended to surface. A North–South divide in terms of culture, practice and custom was often apparent. Thus while discussing the question of divorce, there was mention that the customary laws of South India permitted the practice. Hindu Mahasabha leader S. P. Mukherjee was provoked into replying: 'I say good luck to South India. Let South India proceed from progress to progress, from divorce to divorce. . . . Why force it on others who do not want it?'[68] Or again, while discussions on woman's property rights were on, it was evident that opponents of the measure based their logic on the basic principle that daughters are born to go out of the family. Making a mocking distinction between Northern and Southern Indian practices, Pandit Mukut Behari Lal Bhargava commented that in the north of India, 'the father or mother will not even take water in the house of the daughter' whereas the South with its more liberal customs seemed like 'an outside country'.[69]

A legal and constitutional angle to the debate was projected by Dr Rajendra Prasad, which proved to be the greatest challenge to the Nehru government's bid to see the legislation through. Prasad pointed out that the measure, owing to its controversial nature, should be incorporated into the election manifesto of the Party and placed before the electorate. Any attempt to push the measures through would, apart from rousing bitter feelings, 'affect the chances of the Congress at the next election'.[70] Finally, knowing that the Nehru government was determined to push the controversial Bill through, Rajendra Prasad, who had been opposing various aspects of the Bill, made it abundantly clear that as President, he might exercise his option and reserve his assent to the measure.[71]

Nehru's reaction and response to the proceedings of the debate on the Hindu Code Bill indicate a sense of hopelessness. In a candid letter to Vallabhbhai Patel he wrote: 'What is important is the difference in outlook between Parliament as a whole and me. They put

[67] *LSD* 1955, vol. IV, pt II.
[68] *CAD* 1951, vol. XV, pt II, p. 2716.
[69] *CAD* 1949, vol. VI, pt II.
[70] Rajendra Prasad to J. Nehru, 24 July 1948, *SPC*, vol. VI.
[71] Note from Rajendra Prasad to J. Nehru, 15 Sept. 1951, *ibid.*

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up with me because of their friendliness towards me and their affection and a certain past record and habit of doing so. But they go farther and farther away from me in mind and heart. This produces unhappiness all round and frustration and work suffers'.[72]

To begin with, Nehru had been confident that following the easy acceptance of the Fundamental Rights resolution ensuring sex equality at Karachi 1931 and subsequently, in 1947, by the Constitution, the Hindu Code Bill would be easily passed. In 1949 he stated firmly: 'We stand committed to the broad approach of the Bill as a whole and the Government will stand or fall on it'.[73] The hornet's nest that was roused in the course of the debates took him by surprise. He painfully realized that while accepting the principle of sex equality on paper, there had been no serious contemplation of what it implied and hence the outburst on seeing the specific clauses of the Bill.

For Nehru the Hindu Code was a necessary reform measure which fitted into his larger perspective of all-round national development. As he put it, 'We talk about Five Year Plans, of economic progress, industrialization, political freedom and all that. They are all highly important. But I have no doubt in my mind that the real progress of the country means progress not only on the political plane, not only on the economic plane, but also on the social plane. They have to be integrated, all these, when the great nation goes forward'.[74]

The proposed reforms were not revolutionary to Nehru, since many of the customary laws had already adopted them in some form or other. To him they were 'a very moderate measure of social reform . . . indeed very largely a codification of the existing law'.[75] As the first Prime Minister it was important, he felt, to weave a certain pattern of uniformity into legal practices which would hold good throughout the land. He believed that the Hindu society which was traditionally dynamic and vibrant instead of static and inflexible, would be able to absorb and integrate the changes proposed without any disruption. The changes envisaged were more than warranted by the swiftly changing socio-economic conditions that were taking place. As he crisply put it, 'It is very unfair for Manu or Yagnavalkya or anybody else to be brought in as a witness as to what should be done in the present conditions'.[76] To him the Hindu Marriage Bill was of special

[72] Jawaharlal Nehru to Vallabhbhai Patel, 21 Feb. 1950 in *Dr Rajendra Prasad: Correspondence and Select Documents*, vol. 12, edited by Valmiki Chowdhury (1989).
[73] *CAD* 1949, vol. VII, pt II, p. 784. [74] *LSD* 1955, vol. IV, pt II.
[75] J. Nehru to R. Prasad, 15 Sept. 1951, *ICD*, vol. I.
[76] *LSD* 1955, vol. IV, pt II.

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symbolical value since it would be the first major crack on the age-old system of Hindu personal law.[77] Indeed, he felt confident that this Parliament would be remembered for that particular measure of social reform rather than any other legislative activity.[78]

Nehru felt disgusted by the repeated references to the pristine purity of the Hindu shastras and the exalted position given to Sita, Savitri, Damayanti and others. As he put it, 'I have a feeling that these echoes from the past are raised chiefly to hide our present deficiencies and to prevent us from attacking the root cause of women's degradation today.'[79] Why, after all, were men not reminded in the same manner of Ramachandra and Satyavan, and urged to behave like them.[80] Were they 'supposed to be perfect, incapable of any further effort or further improvement?'[81]

Nehru also strongly condemned the tendency that he noticed in the parliamentary debates constantly to run down western civilization in an attempt to praise one's own in comparison. As he put it, 'to make a parallel and say, "See how horrible the conditions in America are, and, if you pass this Bill, you will have the same conditions" is not only non-sequitor in logic but it is a bad way of approach'.[82] He explained that the large incidence of divorce and other family problems in the West was due to the impact of industrialization on human relationships and this was a trend which could well affect the developing world.

On several particular provisions of the Code, which caused acrimonious debate, for example the divorce issue, Nehru spoke very forcefully. He considered it absurd to put a halo round a sacramental marriage and call it inviolable. With powerful invective Nehru asked: 'does it mean that it is a sacrament to tie up people who bite, who hate each other, who make life hell for each other? . . . There is something rather fine in human relationships provided they are good relationships'.[83]

Throughout the prolonged course of the debates, Nehru's own interjections were not very many. This was probably because it became painfully clear to him that his world view was so totally different from that of most fellow parliamentarians. On the question

[77] 20 May 1955, Jawaharlal Nehru: *Letters to Chief Ministers 1947–64*, vol. IV (1988).
[78] 17 Sept. 1951, Jawaharlal Nehru: *Letters to Chief Ministers 1947–64*, vol. II (1986).
[79] *SWJN*, vol. 3, Speech at Mahila Vidyapith, Allahabad, 31 March 1928.
[80] *Jawaharlal Nehru's Speeches 1953–57* (1958), p. 451.
[81] 5 May 1955, *LSD* 1955, vol. IV, pt II.
[82] *Ibid.*
[83] *Ibid.*

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of allowing women equal property rights, for instance, Nehru's own views on the subject can be sharply contrasted with the views of those who bitterly opposed the measure. After the death of Motilal Nehru, Jawaharlal found himself heir to his father's sizeable property. He wrote to his sister Krishna, 'I can only consider myself as a joint sharer in father's property; the other sharers being mother and you. I am not including Nan, as she stands in no need of money. . . . Indeed mother and you are the real sharers. I am a trustee for the family property . . .'.[84]

Stemming from this major difference in mentalities was the practical problem of keeping the debates within manageable limits. Nehru realized that the absence of time limit in the speeches caused the debates to become tediously long and dilatory. There was also a feeling that deliberate filibustering prevented the measures being passed. For Nehru the position was particularly delicate because even the Deputy Speaker, Ananthasayanam Aiyangar, had pronounced views againt the Hindu Code. So while Nehru did not desire to suppress full discussion, he was wary of all the motions brought in by various members in an attempt to postpone discussions and obstruct the measures.

He was also conscious of the fact that the Hindu Mahasabha was exploiting the situation for political purposes.[85] Nehru gradually came to accept the position that the Hindu Code Bill in its existing form could never secure Parliamentary approval. With its changes and recommendations, it had become very unwieldy—'a huge document of hundreds and hundreds of pages. . . . It was so big that we could never get through it'.[86] It was decided, therefore, to split the Bill into several parts and the first, dealing with Marriage and Divorce, was taken up.

In September 1951, there seemed to be little doubt that Jawaharlal Nehru was determined to steer the Marriage and Divorce Bill through. In a letter to Rajendra Prasad on 15 September 1951, Nehru took a tough legal stand and stated firmly that 'the President has no power or authority to go against the will of Parliament in regard to a Bill that has been well-considered by it and passed. The whole con-

[84] Krishna Hutheesingh, *We Nehrus* (1967), p. 99.

[85] The demonstration of over 500 people outside the Parliament House on 12 December 1949, burning Gandhi caps and effigies and chanting 'Down with the Hindu Code Bill' and 'Down with the Nehru Government' was for Nehru, a 'revealing' experience; 15 December 1949, Jawaharlal Nehru, *Letters to Chief Ministers 1947–64*, vol. I (1985).

[86] 5 May 1955, *LSD*, 1955, vol. IV, pt II.

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ception' of constitutional government is against any exercise by the President of any such authority'.[87] He declared his firm intention to enact the Marriage and Divorce part of the Bill as a separate Act before the current Parliament session ended. This deadline coincided with that accepted by Nehru's Law Minister, B. R. Ambedkar, who despite his ill health, had been determined to get the Marriage & Divorce Act passed in the September 1951 session of Parliament. Ambedkar had even requested Pandit Nehru to prepone Parliamentary discussions on the Hindu Code to 16 August so that it would be completed by 1 September and he could resume his medical treatment without any interruption. Nehru, however, felt he could not rush proceedings without harming the cause of reform. Requesting Ambedkar to be a little patient, he slated 17 September 1951 for the day when the Marriage & Divorce Bill would be taken up to be seen into an Act by the time the session ended.

In effect, however, after only four clauses were passed, the Bill was dropped. As Ambedkar dramatically put it, after a life of four years in the House the Bill was 'killed and died unwept and unsung'. To Ambedkar it was 'a great shock—a bolt from the blue'.[88] He resigned his seat from the Cabinet on 27 September 1951 and in a Press Note dated 10 October 1951 declared in no uncertain terms: 'I got the impression that the Prime Minister although sincere, had not the earnestness and determination required to get the Hindu Code Bill through'.[89] The unavoidable impression at that time was that the Nehru Government had proved weak kneed and failed to back up Ambedkar. As a journalist commented on Nehru at that time 'he wrote like an angel and spoke like Poor Paul'.[90] Ambedkar himself ascribed the non-passage of the Bill to the inability of Nehru to persuade the chief whip of Parliament to limit the time taken on speeches so that filibustering could be avoided and the measure passed. As Ambedkar sarcastically put it, 'I have never seen a case of chief whip so disloyal to the Prime Minister and the Prime Minister so loyal to a disloyal whip . . .'.[91] Ambedkar also laboured under the belief that the Nehru Government had intentionally, over the years, not allowed sufficient time for the Hindu Code to be discussed in Parliament. Even at the September 1951 session other issues which

[87] J. Nehru to R. Prasad, 15 Sept. 1951, *ICD*, vol. I.
[88] *Selected Speeches of B. R. Ambedkar*, vol. I, compiled by Bhagwan Das (1963).
[89] *Ibid.*
[90] Keer, *Dr Ambedkar: Life and Mission*, p. 431.
[91] *Selected Speeches of B. R. Ambedkar*, vol. I.

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Ambedkar felt could have been taken up later, for example the Benaras and Aligarh University Bills or the Press Bill, were given priority of discussion over the Hindu Code.

What was the truth that lay behind the inability of the Parliament to pass the Hindu Marriage and Divorce Bill in September 1951? How valid was Ambedkar's indictment of Nehru?

The inescapable conclusion seems to be that Jawaharlal Nehru, in spite of his spirited stand before the President, tended to back pedal at the eleventh hour and there was the proverbial gap, as Ambedkar put it, between the 'promises and performances of the Prime Minister'.[92]

It seems likely that Rajendra Prasad's reply dated 18 September 1951 written with incisive legal logic, to Nehru's strong letter of 15 September had made a serious impression on Nehru. While reiterating that the Constitution conferred on the President in 'unequivocal terms' the right to confer or withhold assent to a Bill, Prasad went on to warn Nehru that with the general elections only four months away, Nehru by introducing the controversial legislation just then, would be taking a gamble on Congress chances in the election.[93] This logic weighed heavily on Nehru's conscience. Further, Prasad's charge that it would be undemocratic and morally wrong of the Nehru Government to exploit the popularity that it enjoyed in Parliament, by getting a debatable measure passed, worried Nehru.[94] Prasad's strongly worded letter to Nehru was a calculated and desperate move to stall legislation. As Prasad confided to Dr K. N. Katju, 'I have written as strongly as I could ... I could not have done more'.[95] Rajendra Prasad with his intimate association with Nehru in Congress politics must have known that Nehru's ideological stand on the issue would ultimately have to take into account the brutal logic of practical politics.

There was also another dimension to Nehru's dilemma posed by Ambedkar himself who, though he shared with Nehru a passionate zeal for social legal reforms, approached the problem in a totally different way demonstrating a complete difference in world views. Being of the untouchable Mahar caste, Ambedkar took upon himself the task of getting the bill through as a crusade against the bastions of

[92] *Ibid.*

[93] Rajendra Prasad to J. Nehru, 18 Sept. 1951, *ICD*, vol. I.

[94] President's Note on the Hindu Code Bill in *Dr Rajendra Prasad: Correspondence and Select Documents*, vol. 12.

[95] R. Prasad to K. N. Katju, 21 Aug. 1948, in *Dr Rajendra Prasad: Correspondence and Select Documents*, vol. 10, edited by Valmiki Chowdhury (1988).

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the tyrannical upper caste stranglehold over Hindu society. Ambedkar had researched deep into the shastras which he freely quoted to illustrate weaknesses in the Hindu social system and to ridicule many of its socio-religious practices.[96] Having publicly burnt the Manusmriti in 1927,[97] Ambedkar made the passing of the Hindu Code an article of faith. As his biographer put it, 'He was inspired by the thrilling idea that a Mahar would be reorganizing the basic framework of the Hindu society'. As Ambedkar put it, Hindu society had enslaved both Sudras and women, who had to be rescued by law so that society could move on.[98] Ambedkar's basic argument was that Hindu society was inert and static where the function of law machinery had been left to the Gods. For the first time, Hindu society was being encouraged to move in a positive direction and, therefore, all opposition, though substantial, had to be disregarded.[99] To him the pace of reform had to be fast and he was most reluctant at having had to agree to the original Code being split up. Ambedkar's messianic ardour and his aggressive stance provoked a lot of opposition. As a critic put it, Dr Ambedkar was 'bristling with barbed wire from the inside out, and no respector of persons'.[100] Parliamentarians became incensed with Ambedkar's loud denunciations of the Hindu social system, 'his abuses and invectives' and his attempts to 'vilify the Hindu religion'.[101] While Ambedkar was desperate to see at least the Marriage and Divorce Act through,[102] his opponents were equally determined that he should be denied the distinction of being called the 'Modern Manu'. Some members openly declared that as long as Dr Ambedkar was piloting the Bill, they would not allow it to pass.[103] Even those not opposing the measures per se became determined to vote down the Bill as an expression of anti-Ambedkarism. There were

[96] He pointed out, for instance, the derogatory references to women in Manusmriti; he ridiculed the authority of Purushashukta in determining the caste system as 'the fantastic dream of a troubled mind'; he dismissed Krishna's illicit intimacy with Radha. B. R. Ambedkar, *Writings and Speeches*, vol. 3 (1987), compiled by Vasant Moon.

[97] S. G. Barve, 'Dr B. R. Ambedkar' in *Thoughts on Dr Ambedkar*, compiled by Hoti Lal Nim (1969).

[98] *CAD* 1951, vol XV.

[99] *CAD* 1948, vol. V.

[100] Vincent Sheen, 'Dr Ambedkar' in *Thoughts on Dr Ambedkar*.

[101] Dr C. D. Pande's observations, *CAD* 1951, vol. XV.

[102] He wrote to J. Nehru that he attached the 'greatest importance to this measure and would be prepared to undergo any strain on my health to get the Bill through.' 10 Aug. 1951, *CAD* 1951, vol. XVI, pt II.

[103] Deogirikar, *Twelve Years in Parliament*, pp. 100–1.

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personal attacks on his background and even suggestions that his keenness to get the Marriage and Divorce Act passed was because he wanted to legalize his own marriage.[104] Dr Pattabhi Sitaramayya (Congress-Madras) denounced the 'professorial, pedagogic and pontifical attitudes' of Ambedkar which 'will only alienate attitudes that have almost been reconciled' or, as Naziruddin Ahmed said, 'perhaps call up an opposition where there is none now'.[105]

To Jawaharlal Nehru, Ambedkar's approach to the issue was a total anathema. Whereas Ambedkar dwelt on the static quality of Hindu society, Nehru was never tired of emphasizing its dynamism. 'Hindu law had never been rigid', Nehru said, 'Hindu law had a certain dynamic quality' which could easily absorb the prospective socio-legal changes.[106] As against the hurry with which Ambedkar tried to rush the Bills through, Nehru felt that it would be tactically unsound to give a handle to opponents to say that they were gagged and not given an opportunity for discussion.[107] Pragmatically viewing the impasse created by the obstructionist and delaying tactics in Parliament, Nehru analysed: 'We may pass the Bill in spite of this opposition' but there would be great obstruction in the implementation of the Bill when passed. Large numbers of people might offer this obstruction in an organized way. 'It is always difficult to deal with this kind of thing'.[108] Although Nehru advocated tact and restraint, Ambedkar managed to make himself the focal point of controversy. Nehru's dilemma was complete. On the floor of the House he declared, 'I want to make it perfectly clear that I stand by every word that the Law Minister has said'.[109] And yet, the virulence of Ambedkar's opposition and the 'hurt caused by his provocative language'[110] created a situation when Nehru seriously considered resignation and reforming his Cabinet with a more congenial Law Minister.[111] It is not surprising, therefore, that Ambedkar's resignation did not cause any protest from Nehru. On the contrary, he was so apprehensive that Ambedkar's resignation speech in Parliament would stir up further controversy that he insisted on receiving a copy of the speech in advance. Ambedkar considered this gesture as tan-

[104] Pandit Thakur Das Bhargava, *LAD* vol. I, pt II.
[105] *CAD* 1950, vol. VII.
[106] *LSD* 1955, vol. IV, pt II.
[107] J. Nehru to Ambedkar, 20 March 1949, *SWJN* Second Series vol. 10.
[108] J. Nehru to Ambedkar, 26 Feb. 1949, *SWJN* Second Series vol. 10.
[109] *CAD* 1950, vol. VII.
[110] *LSD* 1956, vol. X.
[111] Keer, *Dr Ambedkar: Life and Mission*, p. 426.

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tamount to censorship and resigned in a huff and released his speech to the Press.[112]

Ambedkar's resignation was a setback to the pace of reform. Nehru's government had taken a beating—the reformers felt let down, the traditionalists felt elated—the women Parliamentarians felt that Nehru had been weak. Nehru admitted as much when he wrote to the Chief Ministers: 'We had to confess defeat for the moment at least'.[113] The painful experience was not without its lessons. The opposition, Nehru realized, could not be wished away. As he had explained to Ambedkar, 'With the best will in the world, we cannot brush aside this opposition and get things done quickly. They have it in their power to delay a great deal. We must, therefore, proceed with some tact'.[114] His tactics were simply to bide time. His commitment to the cause of reform remained. As he wrote, 'Personally, I shall not give up this fight because I think it is intimately connected with any progress on any front that we desire to make'.[115] To committed women reformers like Renuka Ray and Durgabai Deshmukh, Nehru was most reassuring. He asked them to trust him to choose the opportune moment for the enactment of the legislation. 'If we come back [after the elections]', Nehru assured Renuka Ray, 'we shall not tolerate dilatory tactics and we will not allow impediments to the passage of this vital legislation'.[116]

With Congress success in the 1951 elections, Nehru was assured of a stronger support in Parliament to back his social reform legislation. Since the issue had dragged on for long, differences of opinion had been amply talked out. Law Minister C. C. Biswas would claim in 1954 that the delay in passing the legislation was 'fully justified' because over the years the bitter opposition to the Bills had died down.[117] Ambedkar's absence from the House had also removed the element of controversy which had previously crept into the debates and been much politicized by interested parties. Now that Parliament was freshly constituted with the mandate of the people, Congress veterans like Rajendra Prasad could also not raise further objections. Finally, the Bills themselves had been made more acceptable by whit-

[112] *Ibid.*
[113] Jawaharlal Nehru, *Letters to Chief Ministers 1947–64*, vol. II (1986), 4 Oct. 1951.
[114] Nehru to Ambedkar, 10 Aug. 1951, *CAD* 1951, vol. XVI, pt II.
[115] Nehru to Ambedkar, 27 Sept. 1951, *CAD* 1951, vol. XVI, pt II.
[116] Renuka Ray, *My Reminiscences: Social Development during Gandhian Era and After* (1982), p. 149.
[117] *LSD* 1954, vol. V, pt II, pp. 6973–6.

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tling down the controversial points. As Sardar Hukum Singh put it, 'It is not the public opinion that has changed its attitude . . . . This is not the original Bill . . . . That Hindu Code has practically been given up by the Government'.[118] Even then, it took a few more years before the Hindu Marriage Act was passed in 1955, followed by the Hindu Succession Act, the Hindu Minority and Guardianship Act and the Hindu Adoption and Maintenance Act all of which were passed in 1956 and finally, the Dowry Prohibition Act passed in 1961.

To Nehru the passage of the Hindu Reform legislation marked a victory. To Aubrey Menen he remarked that they constituted the greatest real advance in his career.[119] In a report to his Chief Ministers, Nehru declared that the 'passage of this legislation marks an epoch in India' for 'it has pulled out Hindu law from the ruts in which it had got stuck and given it a new dynamism'.[120]

To what extent was this a victory of symbol over substance? Even after almost four decades since the epoch-making legislation was made, the condition of women in the country in general remains unequal. Broad demographic data show a decline in sex ratio, higher female infant mortality, continuing incidence of child marriage, rising rate of reported dowry deaths and bride burnings, low level of female literacy and work-force participation. Apart from many other factors, this predicament can also be traced to the fact that major loopholes had remained in the social legislation passed in Nehru's time and that, in the euphoria of having passed the legislation, a sense of false complacency had crept in and proper measures to enforce the legislation through a functioning infrastructure or attempts to bring in improving legal amendments were not undertaken. For both, Nehru and his Government, can be partially faulted.

Unlike customary law which had been simple, inexpensive and geared to local requirements, the separate Acts had nuances which were never fully explained or understood at the local level. Moreover, in many cases, those guilty of violating the laws could not be easily brought to book as the offence was very often not cognizable, as in the case of the Child Marriage Restraint Act. Also the compulsory registration of marriages recommended in the Hindu Marriage Act which would have been an excellent check on child and bigamous

[118] *LSD* 1954, vol. V, pt II, pp. 7253–4.

[119] Aubrey Menen's account of his interview with Nehru in Raloff Beny, *India* (London, 1969), p. 189.

[120] Jawaharlal Nehru, *Letters to Chief Ministers 1947–64*, vol. IV (1988), 10 May 1956.

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marriages remained ineffective since there was no clause threatening the validity of a marriage not registered.[121]

In the case of the Hindu Succession Act, there were several major compromises which many considered were a sell-out by the Nehru government. For example, the joint family system of the Hindus which Nehru had criticized as being 'a relic of a feudal age, utterly out of keeping with modern conditions'[122] was retained. The retention of the Mitakshara Coparcenary, whose membership was confined only to males, meant that sons would not only get a share of their father's property but also their own interest as coparceners in the joint family property. Daughters would only get an equal share in paternal property. V. Prasad Rao (M.P., Congress-Hyderabad) called this a case of 'fractional justice'.[123] Moreover, the coparcener's right to will away this share in the joint family property and transform his self-acquired property into joint family property could negate or reduce the share of a female heir. This provision introduced in the last stages of legislation by Pataskar, the Law Minister, was widely perceived by the contemporary press to be a capitulation by the government to what an M.P. called, 'the fifth column of the Hindu Mahasabha within the ranks of the Congress'. Moreover, by excluding agricultural land from the pale of legislation relating to succession, its beneficial impact remained largely restricted. The distinction made in the right of inheritance in a dwelling house, between unmarried, widowed and married daughters was discriminatory against married daughters. As Lotika Sarkar put it explicitly, 'a daughter who is part of an ongoing marriage and subject to harassment and cruelty in her husband's home cannot claim even the right of residence in the family house'.[124] A woman who had deserted her husband was not to be given dwelling rights in the parental house either, the logic being that such women were not 'needy' and could have deserted only because they had thoughts of another marriage.[125] Moreover, those daughters (unmarried, widowed, separated) who had a right to residence could not demand partition until the brothers agreed to partition their share.[126] Finally, the unrestricted right of testation, i.e., right to make a will, often led girls to be dependent on their father's good will for being

[121] *Towards Equality: Report of the Committee on the Status of Women in India* (Ministry of Education 1975), p. 114.
[122] *SWJN* vol. 3, p. 399.
[123] *Hindustan Times*, 16 May 1956.
[124] Lotika Sarkar, Empowering Women, in *Seminar*, Nov. 1989.
[125] Pataskar, *LSD* 1956, vol. IV, pt II, p. 7567.
[126] Lotika Sarkar, Empowering Women, in *Seminar*, Nov. 1989.

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provided for in life. In effect, many female heirs were deprived of their rights of inheritance. This clause was actually introduced to render property more mobile in the hands of individual male owners and prevent uneconomic fragmentation of urban family business or family agricultural holdings. In the same strain is the provision in the Hindu Minority and Guardianship Act making the father a natural guardian in preference to the mother. The maintenance provisions in the Adoption and Maintenance Act were woefully inadequate. Even Yagnavalkya had stipulated that the maintenance granted should amount to one-third of the husband's income. The Act, however, left the amount of maintenance to the individual discretion of the judge.

In the ultimate analysis it can be said that Nehru's victory was largely symbolic. He recognized that the legislation as drafted was not perfect. Yet, he was not willing to initiate changes which would shake up the social organization too drastically.[127] In fact, he wondered why the legislation could possibly be objected to by anybody since most of them were 'voluntary permissive pieces of legislation which people may or may not accept'.[128] To him, the Hindu Law Reform Bills were revolutionary in symbol rather than in substance which he claimed to be 'the outstanding achievement' of his time. As he explained, 'they are not in any way revolutionary in the changes they bring about and yet there is something revolutionary about them. They have broken the barrier of ages and cleared the way somewhat for our womenfolk to progress'.[129] Nehru's symbolical victory did help to establish the notion of women's equality as a desirable ideal to which the Indian polity was committed. It is important to note that all the Members of Parliament opposing equal rights for women, whether from the Congress or other parties, such as Hindu Mahasabha, came to preface and end their speeches on the noble note of disclaiming any intention to oppose justice for women.[130] Even the Hindu Marriage Bill, the first in the series of the Hindu Code enactments, was ultimately passed by a near total approval in the Houses of Parliament. The only dissident voice was that of V. G. Deshpande of the Hindu Mahasabha. As Pataskar said, replying to complaints that the Hindu Succession Act had proved inadequate, what is important is that 'henceforward

[127] Jawaharlal Nehru: *Letters to Chief Ministers 1947–64*, vol. II (1986), 4 Oct. 1951.
[128] *Jawaharlal Nehru's Speeches 1953–57* (1958), p. 444.
[129] Jawaharlal Nehru: *Letters to Chief Ministers 1947–64*, vol. IV, (1988), 15 June 1956.
[130] Madhu Kishwar, 'Hindu Code Bill—Myth & Reality', unpublished paper presented at Oxford University 1990.

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daughters would have *a sense of property* irrespective of what actual property she would get under the law'.[131]

Without delving deep into the legal implications of the Acts themselves, Nehru was satisfied with the spirit behind the passage of the Hindu Code Bills. He was deeply conscious of the charges levelled against him that the Hindu social reforms did not amount to much. But as he candidly said, 'You have to make a beginning somewhere!' The gaps in the legislation 'no doubt could be changed .... The struggle to achieve these changes will have to continue'. What was important was that 'the essential principles underlying the changes were not given up'.[132] He linked this legal advance in the social domain with the advances in the political and economic areas for 'only by way of advance on these three separate lines and their integration into one great whole, will the people of India progress'.[133] By recognizing and accepting in principle the concept of woman's equality and forcefully advocating it in the face of opposition, Nehru was able to enunciate an emancipated and liberal point of view which was not only unique in the time when he lived but also has relevance for posterity.

The shortfalls of this idealistic position are obvious. Nehru comes across as being the visionary who could never match his expectations with his achievements. By harping on the symbolic value of the social reforms that were passed, he inadvertently lulled people into a sense of complacency and achievement. Although he considered a uniform Civil Code for the whole of India to be essential, he was afraid that any imposition on communities, before they were ready for such changes, would be unwise. Lack of uniformity, he felt, would be preferable to a situation where, because of ill will, laws passed were dead in their application.[134] Thus the uniform Civil Code which he had originally envisaged was never realized. It remained a pious hope, caught among the linguistic trappings of Article 44 of the Directive Principles of the Constitution. Muslim personal law remained untouched; the principles of protection to women workers and maternity leave benefits which had figured prominently among the Fundamental rights of the Karachi Resolution were relegated to the Directive Principles of the Constitution and finally the principle of

[131] *The Hindustan Times*, 16 May 1956. (Emphasis mine)
[132] Jawaharlal Nehru: *Letters to Chief Ministers 1947–64*, vol. II (1986), 4 Oct. 1951.
[133] Jawaharlal Nehru: *Letters to Chief Ministers 1947–64*, vol. IV (1988), 10 May 1956.
[134] *SWJN*, vol. II, pp. 317–18.

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equal wages for equal work also enshrined in the Directive Principles, came to be passed only in 1976 by his daughter Indira Gandhi as a special gesture in the International Year of the Woman. As a critic aptly summed up, 'In the case of all leaders of men, there is an angle of refraction between ideas and achievements. In Nehru this angle has grown with the unfolding of his ideas. In their very acceptance, has disenchantment grown. That is at once the glory and the tragedy of Jawaharlal Nehru'.[135]

It is important to note, however, that it was not only in the field of social reform for women that this ambivalence in Nehru between thought and action can be seen. Even in the momentous decades of the national movement, Nehru would often take a principled stand on certain issues which later he would have to tone down in the face of Gandhian reaction within Congress. Thus, in the 1930s, when Nehru, fired by socialist thinking, spoke forcefully of doing away with the class structure and taking up the cause of worker and peasant, he was gently made to bow to Gandhian opposition within the Congress. Although he rebelled in speech, he could never rebel in action like Subhas Bose had done. He remained Gandhi's erring and truant child in politics who was always coming back to the fold. The Gandhian old guard consisting of Rajendra Prasad and Vallabhbhai Patel, who in the 1930s had seen Nehru through many crises when he would rebel and yet ultimately submit to the majority opinion, were able to predict his responses and reactions during the Hindu Code Bill crisis. The Congress old guard were against the passage of the Hindu Code legislation and were apprehensive of Nehru's determination to see it quickly through but they finally succeeded in slowing him down. Thus Nehru who began with the vision of a uniform Civil Code ended up by accepting the diluted version of a truncated Hindu Code. For him, it was not, however, a surrender of principles but merely the pragmatic recognition of the volume of opposition that was pitted against him.

To the credit of Nehru it must be said that he never gave up and without him the legislation would not have been passed at all. Parliamentarians like R. K. Chaudhuri, while differing with Nehru on the details of the legislation, conceded that to Nehru went the entire credit of having had the Hindu Code Bills passed.[136] Raj Kumari

[135] Ashok Mehta, 'Planning without Progress', in Rafiq Zakaria, *A Study of Nehru* (1988).

[136] 29 April 1955, *LSD* 1955, vol. IV, pt II.

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Amrit Kaur said as much when she commented: 'The social reforms, that are now on the Statute Book would . . . have been talked out if it had not been for Jawaharlal's powerful advocacy of and insistence on them'.[137]

[137] Amrit Kaur, 'A Friend without Friends', in Zakaria, *A Study of Nehru*.

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